

APZ

Notice of Allowability	Application No.	Applicant(s)	
	10/803,284	REIFFEL, LEONARD	
	Examiner	Art Unit	
	D. I. Lee	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/8/05.
2. ☒ The allowed claim(s) is/are 2-4 and 6-8.
3. ☒ The drawings filed on 18 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>5/2004</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 21 July 2005 and the Supplemental Response both in response to the Final Office Action (mail date: 21/4/05). Claims 2 and 6 have been amended; claims 1 and 5 have been canceled; and no claims have been newly added. Currently, claims 2-4 and 6-8 are pending in the application.

2. Receipt is also acknowledged of the Terminal Disclaimer filed 21 July 2005 to overcome the Double Patenting Rejection (37 CFR §1.321(c)). The terminal disclaimer filed on 21 July 2005 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,708,885 has been reviewed and is accepted. The terminal disclaimer has been recorded. The Terminal Disclaimer filed 21 July 2005 has overcome the double patenting rejection, and accordingly, the double patenting rejection has been withdrawn.

Priority

3. Although this application was filed as a continuation of US patent application Serial No. 10/258,402 filed 23 October 2002 (now U.S. Patent No. 6,708,885), upon review of the parent applications Serial Nos. 10/258,402, the examiner has determined that the currently claimed invention has not been "wholly" disclosed until instant application (i.e., applications Serial No. 10/803,284 filed 18 March 2004). Specifically, the subject matters in claims 2-4 and 6-8. Therefore, Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-

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filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

4. This application repeats a substantial portion of prior Application No. 10/258,402, filed 4/30/01, and adds and claims additional disclosure not presented in the prior application (i.e., the subject matters in claims 2-4 and 6-8). Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Allowable Subject Matter

5. Claims 2-4 and 6-8 are allowed.

6. The following is an examiner's statement of reasons for allowance:

Richley [US 6,542,083] teaches the code light (tag) having code identification in a radio frequency portion of an electromagnetic pulse of radiation spectrum a directional antenna directed, pointed electronically (using an embedded antenna grid) at the tag region by spatial movement for locating the target.

McMahon [US 5,789,732] discloses the device having an optical communication, i.e., the use of optical technology, and RF Wireless communication using a radio frequency link similar to the optical method as another form of communication. The difference is the use of electromagnetic energy in the RF spectrum as opposed to the optical spectrum operation.

Schrottet [US 6,335,685] teaches a system with a wireless tag (i.e., an RF tag) attached to the object and a locator (a position detector) that determines the position of the one or more of the tags within a field of view of the base station. The system captures the data on the

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tag and determines the position of the respective tag. The system uses a directional antenna pointed at the target region for locating the target in the field of view.

Bridgellall et al. [US 6,330,973], Ma et al. [US 6,082,619], Shellhammer [US 5,988,505], and Roustaei et al. [US 5,756,981] discloses an apparatus for imaging products including an imager having a field of view and an image locator.

One of ordinary skill in the art would not have been motivated to modify the teachings of Richley, McMahon, Schrottet, Bridgellall, Ma, Shellhammer, and Roustaei, alone or in combination with other references, in order to provide a dual mode data imaging product having all of the claimed components and which automatically switches between a locate mode and a react mode as claimed and defined by the independent claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Applicant's Remarks

7. With respect to priority date for claims 2-4 and 6-8 is being March 2004, Applicant does not agree with the Examiner's assertion and the applicant further stated that there is not need for the applicant to point out where the claimed subject matter is disclosed in the previous application because there is no outstanding rejection that relays on the priority date (see page 5 of the Applicant's response filed 7/21/05). Although there is no outstanding rejection that relays on the priority date, it is noted by the Examiner that Applicant has not complied with the required condition(s) for receiving the benefit of an earlier filing date under 35 U.S.C. 120, i.e., the later-filed application must be an application for a patent for an invention which is also disclosed in

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the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). Therefore, when the continuation application claims the benefit of the prior nonprovisional application under 35 U.S.C. 120 or 365(c), the disclosure presented in the continuation must be the same as that of the original application. Since the claimed subject matters in claims 2-4 and 6-8 appears to an additional disclosure that are not presented in the prior application, the effective filing date for the currently claimed invention remains 18 March 2004.

Additional Remark

2. In reviewing the application, the examiner noted that the Information Disclosure Statement (PTO-1449) filed 10 May 2004, which was attached to the previous Office Action mailed on 25 August 2005, does not include the examiner's signature. Accordingly, the examiner provided the copy of PTO-1449 with the examiner's initial, signature to complete the record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is (571) 272-2399. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. I. Lee
Primary Examiner
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